
Public Utilities Commission of the State of California

Results of Public Agenda 3138

Meeting Held on Thursday, September 2, 2004 10:00 a.m.

San Francisco, California

Commissioners

Michael R. Peevey, President

Geoffrey F. Brown

Susan P. Kennedy

Loretta M. Lynch

Carl W. Wood

Website: <http://www.cpuc.ca.gov>

Scheduled Commission Meetings

505 Van Ness Avenue, San Francisco

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| <i>Ratesetting Deliberative Meeting*</i> <i>Room 5305</i> <i>(1:30 p.m.)</i> <i>Closed to the Public</i> | <i>Commission Meeting</i> <i>Auditorium</i> <i>(10 a.m.)</i> <i>Open to the Public</i> |
| Monday, October 04, 2004 (San Francisco) | Thursday, September 23, 2004 (San Francisco) |
| Monday, October 25, 2004 (San Francisco) | Thursday, October 07, 2004 (San Francisco) |
| Monday, November 15, 2004 (San Francisco) | Thursday, October 28, 2004 (San Francisco) |
| Monday, November 29, 2004 (San Francisco) | Friday, November 19, 2004 (San Francisco) |
| | Thursday, December 02, 2004 (San Francisco) |

**Ratesetting Deliberative Meeting dates are reserved as noted but will be held only if there are ratesetting matters to be considered and a Commissioner has requested that a Ratesetting Deliberative Meeting be held.*

For further information contact the Public Advisor
(415) 703-2074 E-mail: public.advisor@cpuc.ca.gov



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PUBLIC COMMENT

The following items are not subject to public comment:

- All items on the closed session agenda; these are HEX and EX items.
-

Public Comment:

Re 29: Caryne Hayes, San Francisco, CA

Re 33: Sandy Sohcot, San Francisco, CA

Consent Agenda

Items shown on the Consent Agenda will be taken up and voted on as a group in one of the first items of business of each Commission meeting. Items may be removed from the Consent Agenda for discussion on the Regular Agenda at the request of any Commissioner prior to the meeting.

Orders and Resolutions

1

Res TL - 19047

[3622]

Resolution approving issuance of charter-party carrier certificates pursuant to Section 5374(b) of the Public Utilities Code.

Outcome Approved

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

2

Res ALJ 176-3138

[3624]

Ratification of preliminary determination of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4 and 6.1 of the Commission's Rules of Practice and Procedure.

Outcome Approved

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

3

[3654]

R93-12-008 - Rulemaking on the Commission's own motion to provide rules and regulations governing the requirements for information on contents, inspection, operation, and training for the transportation of hazardous materials by rail within California.

Rulemaking concerning the rules to be applicable to transportation of hazardous materials by rail in California. This proceeding is closed.

(Comr Kennedy - ALJ Weismehl)

Outcome Signed[D04-09-001](#)

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

4

[3663]

A04-03-033 - California Water Service Company (Cal Water).

This decision authorizes Cal Water to issue \$250 million of common shares, preferred shares or debt securities. Debt issues of \$20 million or less are exempted from the Competitive Bidding Rule. This proceeding is closed.

(Exam Jackson)

Agenda 3136, Item 27 7/8/2004 (Staff);

Agenda 3137, Item 7 8/19/2004 (Staff)

Outcome Signed[D04-09-002](#)

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

5

[3727]

A03-12-010 - San Diego Gas & Electric Company (SDG&E).

This decision finds SDG&E's administration of power purchase agreements and procurement of least-cost dispatch power activities for the period beginning January 1, 2003 and ending September 30, 2003 were reasonable and prudent. The decision also finds SDG&E's \$83.3 million energy resource recovery account and overcollected balance at September 30, 2003 was reasonable and prudent. This proceeding is closed.

(Comr Peevey - ALJ Galvin)

Agenda 3137, Item 18 8/19/2004 (Lynch)

Outcome Signed[D04-09-003](#)

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

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- 6**
[3731] **Res T-16855 - Verizon California, Inc. (Verizon).**
This resolution directs Verizon to file an application to request clarification of Finding of Fact (FOF) 3 in D96-10-037 and FOF 15 in D02-10-040 as to whether developers making contributions in aid of construction are entitled to refunds of over-collected federal taxes they paid to telecommunications utilities calculated pursuant to "Method 5" for the period from September 12, 2001 to September 11, 2003. (Advice Letter 10584, filed August 12, 2003)
Agenda 3137, Item 21 8/19/2004 (Staff)
Outcome Held (10/7/04, Consent Agenda.)
Yes: (none)
No: (none)
Abstain: (none)
Absent: (none)
- 7**
[3736] **A99-12-025 - Valencia Water Company.**
For approval of its updated Water Management Program as ordered in Commission Resolution W-4154 dated August 5, 1999. This decision awards The Angeles Chapter of Sierra Club \$4,074.18 for its contribution to D01-11-048 and D03-10-063. This proceeding is closed.
(Comr Brown - ALJ Patrick)
Agenda 3137, Item 23 8/19/2004 (Staff)
Outcome Held (9/23/04, Consent Agenda.)
Yes: (none)
No: (none)
Abstain: (none)
Absent: (none)
- 8**
[3737] **A04-02-028 - Southern California Edison Company (SCE).**
This decision approves with modifications SCE's petition to modify Resolution E-3843. This proceeding is closed.
(Exam Clanon)
Agenda 3137, Item 24 8/19/2004
Outcome Signed
[D04-09-004](#)
Yes: (Brown, Kennedy, Lynch, Peevey, Wood)
No: (none)
Abstain: (none)
Absent: (none)
-

9

[3767]

A04-05-034 - Reduced Rate Long Distance, LLC (RRLD).

This decision grants A04-05-034 to the extent it requests prospective authority to transfer indirect control of RRLD. The Application is denied to the extent it requests retroactive authority for the transfer. This decision also requires RRLD to pay a fine of \$5,000 for violating Pub. Util. Code Section 854(a). This proceeding is closed.

(Comr Kennedy - ALJ Kenney)

**Outcome Signed (Comr. Lynch reserves the right to join Comr. Wood's dissent.
Comr. Wood will file a dissent.)**

[D04-09-005](#)

Yes: (Brown, Kennedy, Peevey)

No: (Lynch, Wood)

Abstain: (none)

Absent: (none)

10

[3793]

R02-01-011 - Order Instituting Rulemaking regarding the implementation of the suspension of direct access pursuant to Assembly Bill 1X and Decision 01-09-060.

This decision extends the two monthly reporting requirements for the utility distribution companies that were originally established in D97-05-040 and D99-05-034.

(Comr Brown, Comr Wood - ALJ Wong)

Outcome Signed

[D04-09-006](#)

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

11

[3804]

I02-04-027 - Order Instituting Investigation into the operations and practices of Verizon (formerly GTE California Incorporated) with respect to its Individual Case Basis contracts.

This decision approves an uncontested settlement agreement between Verizon California and Consumer Protection and Safety Division. Verizon will pay \$4,836,000 to the state General Fund for violations of the Public Utilities Code and Commission rules relating to Individual Case Basis and express contracts. This proceeding is closed.

(Comr Peevey - ALJ McVicar)

Outcome Signed (Comr. Lynch reserves the right to file a joint dissent with Comr. Wood. Comr. Wood reserves the right to file a dissent.)

[D04-09-007](#)

Yes: (Brown, Kennedy, Peevey)

No: (Lynch, Wood)

Abstain: (none)

Absent: (none)

12

[3810]

(ECP) C04-03-018 - Daniel M. Schwartz (Complainant) vs. Pacific Bell Telephone Company dba SBC California (SBC).

Complainant seeks a refund of \$648.63 for toll charges billed by SBC to Complainant's Burlingame telephone. These charges were accumulated when his house guest dialed an Internet access number that was a toll number. However, SBC's charges do not violate any statute or Commission order. The request for relief is denied. This proceeding is closed.

(Comr Brown - ALJ Patrick)

Outcome Signed[D04-09-008](#)

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

13

[3813]

A03-11-018 - Sacramento Regional Transit District.

This decision grants Sacramento Regional Transit District's application to construct and maintain the Sunrise Station Driveway across the Union Pacific Railroad track in the County of Sacramento. This proceeding is closed.

(Exam Clark)

Outcome Signed[D04-09-009](#)

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

14

[3822]

Res W-4493 - California Utilities Services, Inc. (CUS) and All Sewer Utilities.

This resolution authorizes CUS and All Sewer Utilities: (1) CUS a Consumer Price Index increase producing an increase in annual revenue of \$13,134 or 1.9%, and (2) All Sewer Utilities to file for rate increases based on the Consumer Price Index. (Advice Letter 32, filed April 22, 2004)

Outcome Approved

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

15
[3823]

C03-07-031 - Pacific Gas and Electric Company (PG&E) vs. Calpine Corporation, CPN Pipeline Company Calpine Energy Services, L.P., Calpine Natural Gas Company; Lodi Gas Storage, LLC; and DOES 1-10.

In D04-07-006, the Commission approved a settlement among the parties to this proceeding, but inadvertently neglected to dismiss the complaint. On the unopposed petition of Complainant, PG&E and Defendants, Calpine Corporation, CPN Pipeline Company, Calpine Energy Services, L.P., Calpine Natural Gas Company and Lodi Gas Storage, LLC, the Commission now does so. This proceeding is closed.

(Comr Brown - ALJ Thomas)

Outcome Signed

[D04-09-010](#)

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

16
[3825]

A01-10-047 - City of Oxnard.

The City of Oxnard moves to withdraw its application in this matter without prejudice to later refile. The motion is unopposed and is granted. Application 01-10-047 is closed.

(Comr Brown - ALJ Walker)

Outcome Signed

[D04-09-011](#)

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

17
[3827]

A02-03-032 - California Water Service Company (CalWater).

CalWater's petition for modification of D03-03-037 is granted. Two reserved connections are granted an exemption from the approved connections list procedures established in D03-03-037. D03-03-037 is modified accordingly. Joseph Farais' petition for modification of D03-03-037 is moot. Application 02-03-032 is closed.

(Comr Kennedy - ALJ McVicar)

Outcome Signed

[D04-09-012](#)

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

18 (ECP) C04-05-024 - Joseph Gorlock (Complainant) vs. San Diego Gas & Electric Company
[3832] (Defendant).

Complainant claims his electric and gas bills are too high because of errors by Defendant. Recovery is denied. Complainant's usage and bills are correct. Deposit paid to Defendant.

C04-05-024 is closed.

(Comr Wood - ALJ Barnett)

Outcome Signed

[D04-09-013](#)

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

19 R02-06-041 - Order Instituting Rulemaking to require California natural gas and electric
[3835] utilities to preserve interstate pipeline capacity to California.

This decision modifies D04-01-047 to clarify Ordering Paragraph 5. This proceeding is closed.

(Comr Lynch - ALJ Brown)

Outcome Signed

[D04-09-014](#)

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

20 A04-05-001 - Angel Express, Inc. (Applicant).
[3836]

This decision authorizes Applicant to operate as a passenger stage corporation between points in San Francisco, Alameda, Contra Costa, Santa Clara, San Mateo, and Marin Counties, on the one hand, and San Francisco, Oakland, and San Jose International Airports, on the other hand; and to establish a zone of rate freedom. This proceeding is closed.

(Exam Clark)

Outcome Signed

D04-09-015

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

- 21**
[3837] **A04-06-001 - Abdolkarim Nouranian dba Superfly Shuttle and Eslam Pirany.**
This decision authorizes Abdolkarim Nouranian to transfer his passenger stage corporation certificate to Eslam Pirany. This proceeding is closed.
(Exam Clark)
Outcome Signed
D04-09-016
Yes: (Brown, Kennedy, Lynch, Peevey, Wood)
No: (none)
Abstain: (none)
Absent: (none)
- 22**
[3839] **A01-02-012 - Verizon California, Inc.**
For authority to re-categorize inside wire maintenance plans and billable repair service from Category II to Category III service offerings. This decision awards The Utility Reform Network \$51,957 for its substantial contribution to D04-05-058.
(Comr Wood - ALJ Galvin)
Outcome Signed
[D04-09-017](#)
Yes: (Brown, Kennedy, Lynch, Peevey, Wood)
No: (none)
Abstain: (none)
Absent: (none)
- 23**
[3840] **R03-03-014 - Order Instituting Rulemaking into implementation of Senate Bill 669 and Assembly Bill 1734, as they affect the deaf and disabled telecommunications equipment and services program fund.**
This decision grants the California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. an additional compensation award of \$3,220.70 for substantial contributions to D04-05-031. In that decision, the Commission modified an earlier decision and made changes affecting the Telecommunications Access for the Deaf and Disabled Administrative Committee. This proceeding is closed.
(Comr Kennedy - ALJ Kenney)
Outcome Signed
[D04-09-018](#)
Yes: (Brown, Kennedy, Lynch, Peevey, Wood)
No: (none)
Abstain: (none)
Absent: (none)

24

[3842]

A04-04-012 - Nexus Communications, Inc., dba Nexus Communications TSI, Inc. (Applicant).

This decision grants Applicant a certificate of public convenience and necessity to provide limited facilities based and resold local exchange and interexchange telecommunications services. This proceeding is closed.

(Comr Brown - ALJ Prestidge)

Outcome Signed[D04-09-019](#)

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

25

[3844]

Res T-16879 - Citizens Telecommunications Company of California, Inc. (CTC California).

This resolution approves an Interconnection Agreement between CTC-California and SureWest Televideo dba: SureWest Broadband and SureWest Telephone dba: SureWest Broadband, in accordance with the provisions of General Order 96-A and Resolution ALJ-181. (Advice Letter 850, filed July 23, 2004)

Outcome Approved

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

26

[3845]

Res T-16880 - Citizens Telecommunications of California Inc. (CTC-California).

This resolution approves an Interconnection Agreement between CTC-California and MetroPCS California/Florida, Inc. dba: MetroPCS, in accordance with the provisions of General Order 96-A and Resolution ALJ-181. (Advice Letter 851, filed July 23, 2004)

Outcome Approved

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

Regular Agenda

Energy Orders

27 **A99-03-039 - Pacific Gas and Electric Company (PG&E).**

[3366]

This decision concludes the reasonableness review of PG&E's Safety and Reliability Enhancement Funds Balancing Account. It allows PG&E to recover a portion of the charges as provided by Pub. Util. Code §368(e). This proceeding is closed.

(Comr Kennedy - ALJ Long)

Agenda 3132, Item 42 4/22/2004 (Kennedy);

Agenda 3133, Item 40 5/6/2004 (Kennedy);

Agenda 3136, Item 49 7/8/2004 (Brown);

Agenda 3137, Item 64 8/19/2004 (Brown)

Outcome Withdrawn

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

27a

[3806]

ALTERNATE TO ITEM 3366

This decision resolves Pacific Gas & Electric Company's (PG&E) System Safety and Reliability Balancing Account. Pursuant to the provisions of Public Utilities Code Section 368, which was added to the Code by AB 1890, the electric industry deregulation bill, PG&E was allowed an increase in base revenues equal to the consumer price index plus 2% for the years 1997 and 1998. The additional funds thus acquired were to be spent recovering costs incurred from enhancement of system safety and reliability. The Commission approved PG&E's cost recovery plan in 1996 and laid out in detail the steps PG&E was required to follow in recording the costs in D96-12-077 and D98-12-094. PG&E seeks approval for approximately \$120 million in costs incurred pursuant to Section 368 and our prior decisions. The Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) have filed objections. This decision allows most costs sought by PG&E. The decision disallows applications for automated meter readers and meter reader trucks as too remote and insignificant in their effects on system safety and reliability. The decision also orders PG&E to file a Catastrophic Event Memorandum Account application to seek recovery of approximately \$29 million in storm and flood-related costs included in this application. This proceeding is closed.

(Comr Brown)

Agenda 3137, Item 64a 8/19/2004 (Brown)

Outcome Signed (Comr. Lynch reserves the right to file a dissent. Comr. Wood reserves the right to file a dissent.)

[D04-09-020](#)

Yes: (Brown, Kennedy, Peevey)

No: (Lynch, Wood)

Abstain: (none)

Absent: (none)

28

[3713]

A04-02-030 - PacifiCorp and 2677588 Washington LLC.

This order authorizes PacifiCorp to sell and transfer its interest in the Skookumchuck dam in the State of Washington to a subsidiary of TransAlta Corporation (TransAlta). The sole purpose of the Skookumchuck dam is to meet cooling water requirements of the nearby Centralia Steam Electric Generating Plant (Centralia Power Plant), which with Commission approval was purchased four years ago by a subsidiary of TransAlta. The Centralia Power Plant serves customers in the State of Washington. Energy customers of PacifiCorp in California (representing about 2% of PacifiCorp's business) are expected to benefit from the sale in that income from the dam operations is minimal and the application forecasts a \$200,000 reduction in California revenue requirements. PacifiCorp will receive its net book value of the assets being transferred, with no appreciable gain or loss. This proceeding is closed.

(Comr Kennedy - ALJ Walker)

Agenda 3137, Item 9 8/19/2004 (Lynch)

Outcome Signed (Comr. Lynch will file a concurrence. Comr. Wood will join Comr. Lynch's concurrence.)

[D04-09-021](#)

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

29

[3743]

R04-01-025 - Order Instituting Rulemaking to establish policies and rules to ensure reliable, long-term supplies of natural gas to California.

This decision addresses the Phase I proposals of Southern California Gas Company, San Diego Gas & Electric Company, Pacific Gas and Electric Company, and Southwest Gas Company. These proposals were filed in accordance with this Order Instituting Rulemaking and address interstate pipeline capacity contracts, liquefied natural gas access, and interstate pipeline access.

(Comr Kennedy, Comr Peevey - ALJ Fukutome, ALJ Wong)

Agenda 3137, Item 71 8/19/2004

Outcome Signed (Comr. Kennedy will file a concurrence. Comr. Lynch will file a dissent. Comr. Wood will file a dissent.)

[D04-09-022](#)

Yes: (Brown, Kennedy, Peevey)

No: (Lynch, Wood)

Abstain: (none)

Absent: (none)

29a

[3843]

ALTERNATE TO ITEM 3743

This alternate establishes an evidentiary hearing process in Phase II to consider California's future need for natural gas, the price, environmental, reliability, operational and gas quality effects of bringing LNG to the California market, and other supply options. The alternate directs California's natural gas utilities to file open access tariffs for all supply sources but declines to establish new receipt points or preapprove LNG contracts pending the evidentiary hearings to be conducted in Phase II. It outlines additional restrictions on the utilities' acquisition of interstate pipeline capacity and storage holdings that would be eligible for the pre-approval process, finds that third party storage for the utilities' core portfolios is unnecessary at this time, and makes other changes to the Draft Decision.

(Comr Lynch)

Outcome Defeated

Yes: (Lynch, Wood)

No: (Brown, Kennedy, Peevey)

Abstain: (none)

Absent: (none)

29b (Rev.)

[3865]

ALTERNATE TO ITEM 3743

The alternate pages reflect the outcome of what was proposed in the Draft Decision that was mailed on July 20, 2004.

(ALJ Fukutome, ALJ Wong)

08/30/2004 - This item was not listed on the agenda distributed to the public.

Outcome Withdrawn

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

30

[3790]

R01-08-028 - Order Instituting Rulemaking to examine the Commission's future energy efficiency policies, administration, and programs.

The Energy Action Plan, adopted by the Commission, the California Energy Commission and the California Consumer Power and Conservation Financing Authority, identifies reduction of energy use per capita as the overall, highest goal for resource procurement. This decision has translated this mandate into explicit, numerical goals for electricity and natural gas savings for the four largest investor-owned utilities: Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company. The adopted annual and cumulative goals for energy savings through the year 2013 are presented in Tables 1a-1d, by IOU service territory. These goals will be updated every three years, in concert with a three-year program planning and funding cycle for energy efficiency. In preparation for the program year (PY) 2006-2008 planning cycle, the Commission is in the process of designing the future administrative structure for energy efficiency in a separate phase of this proceeding. The program administrators that the Commission selects under this structure will be required to submit energy efficiency program plans and funding levels for PY2006-PY2008 in the coming months to meet the electric and natural gas savings goals adopted today. Future updates to these goals will be considered for the PY2009-PY2011 planning cycle, based on updated savings potential studies, accomplishment data and other evaluation studies, as appropriate.

(Comr Kennedy - ALJ Gottstein)

Outcome Held (9/23/04.)

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

Energy Resolutions and Written Reports**31 Res E-3880 - Southern California Edison Company (SCE).**

[3786]

SCE submits an Advice Letter containing its first annual filing requesting recovery of costs recorded in the bark beetle Catastrophic Event Memorandum Account for the period April 3, 2003 through December 31, 2003. SCE's request is approved with modifications. (Advice Letter 1801-E, filed June 4, 2004)

Outcome Held (9/23/04.)

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

32 Res E-3890 - San Diego Gas and Electric Company (SDG&E)

[3847]

Motion for Reconsideration of Resolution E-3884, adopted by the Commission August 19, 2004, regarding approval of a new renewable energy contract with a wind energy facility. (Advice Letter 1596-E, filed June 15, 2004)

**Outcome Approved (Minute vote on motion for reconsideration of Res. E-3884,
 adopted by the Commission on 8/19/04.)**

Yes: (Brown, Kennedy, Lynch, Peevey)

No: (Wood)

Abstain: (none)

Absent: (none)

Telecommunication Orders**33**

[2636]

R01-09-001 - Order Instituting Rulemaking on the Commission's own motion to assess and revise the new regulatory framework for Pacific Bell (Pacific) and Verizon California Incorporated.

I01-09-002 - Related matters. This proposed decision addresses Phase 2B audit issues. The proposed decision sustains most of the findings of an audit of Pacific's intrastate financial results for the period 1997-1999 that were considered during Phase 2B. Despite the audit adjustments, this decision, read in combination with the findings reached by the Commission in Phase 2A of this proceeding, does not increase Pacific's earnings to a level requiring it to make refunds to its ratepayers.

(Comr Kennedy - ALJ Thomas)

Agenda 3123, Item 40 11/13/2003 (Staff);

Agenda 3125, Item 70 12/18/2003 (Staff);

Agenda 3126, Item 57 1/8/2004 (Kennedy);

Agenda 3129, Item 31 2/26/2004 (Wood);

Agenda 3131, Item 39 4/1/2004 (Staff);

Agenda 3134, Item 45 5/27/2004 (Staff);

Agenda 3135, Item 30 6/9/2004 (Kennedy);

Agenda 3136, Item 68 7/8/2004 (Peevey);

Agenda 3137, Item 81 8/19/2004 (Lynch)

Outcome Held (9/23/04. Further review.)

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

33a

[2637]

ALTERNATE TO ITEM 2636

I01-09-002 - Related matters. This alternate resolves Phase 2B audit issues. This alternate, read in combination with the findings in D04-02-063, does not increase Pacific's earnings to a level requiring it to make refunds to its ratepayers. The alternate proposed decision accepts Pacific's claim of lawyer-client confidentiality concerning certain information, but prohibits the booking of contingent liability accruals that rely on that information. The alternate proposed decision denies Pacific's request to recover audit costs because of its failure to cooperate with the audit. The alternate orders corrections to the regulatory accounts concerning the booking of Local Number Portability costs and reducing the levels of authorized "Cash Working Capital." The alternate also orders Pacific to make other error-correcting adjustments, with the timing of the adjustments consistent with GAAP (which was previously adopted by this Commission to guide telecommunications accounting).

(Comr Kennedy)

Agenda 3123, Item 40a 11/13/2003 (Staff);

Agenda 3125, Item 70a 12/18/2003 (Staff);

Agenda 3126, Item 57a 1/8/2004 (Kennedy);

Agenda 3129, Item 31a 2/26/2004 (Wood);

Agenda 3131, Item 39a 4/1/2004 (Staff);

Agenda 3134, Item 45a 5/27/2004 (Staff);

Agenda 3135, Item 30a 6/9/2004 (Kennedy);

Agenda 3136, Item 68a 7/8/2004 (Peevey);

Agenda 3137, Item 81a 8/19/2004 (Lynch)

Outcome Held (9/23/04. Further review.)

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

34

[3199]

I02-06-003 - Investigation on the Commission's own motion into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless and related entities (collectively Cingular) to determine whether Cingular has violated the laws, rules and regulations of this State in its sale of cellular telephone equipment and service and its collection of an early termination fee and other penalties from customers.

This modified decision finds that Cingular's corporate practice and policy from January 2000 to April 31, 2002 violated (1) Pub.Util.Code §451 and D95-04-028 because it allowed no trial of its wireless service and prohibited early termination of wireless service contracts unless the customer paid an early termination fee of \$150 or more, even though testing wireless service by using the phone is the best way for a customer to ascertain whether the service meets his or her needs, and (2) violated §§451, 702 and 2896 and D95-04-028 because it failed to disclose known network problems during 2001 and, in spite of these problems, continued to prohibit refunds/returns and require early termination fees for early cancellation of wireless service contracts. Decision orders a penalty of \$12,140,000 and requires reparations to customers. This modified decision addresses the issues raised by the Commission's Consumer Protection and Safety Division, Utility Consumers Action Network, and Cingular in their appeals to the Presiding Officer's Decision filed October 9, 2003. This proceeding is closed.

(Comr Wood - ALJ Vieth)

Agenda 3128, Item 48 2/11/2004 (Kennedy);

Agenda 3131, Item 45 4/1/2004 (Kennedy);

Agenda 3133, Item 50 5/6/2004 (Staff);

Agenda 3134, Item 47 5/27/2004 (Peevey);

Agenda 3136, Item 69 7/8/2004 (Peevey);

Agenda 3137, Item 82 8/19/2004 (Staff)

Outcome Held (9/23/04.)

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

34a

[3815]

ALTERNATE TO ITEM 3199

PROPOSED ORDER OF COMMISSIONER KENNEDY DIFFERENT FROM PRESIDING OFFICER'S DECISION - This decision finds that Cingular Wireless committed one violation of Section 451 of the Public Utilities Code by unreasonably including a substantial early termination fee in its long-term contracts without including a grace period in which a customer could try out a new cellular telephone. The decision orders Cingular to refund early termination fees to (1) all customers who paid such fees within 14 days of entering a contract in the period from January 1, 2000 to May 1, 2002 and (b) all customers who paid such fees during the period February 1, 2001 through April 30, 2001. The decision also fines Cingular \$890,000, equal to \$10,000 per day for each day from February 1, 2001 through April 30, 2001, a period in which Cingular knowingly failed to disclose serious network problems and continued to aggressively market its services. This decision is final. (Comr Kennedy)

Agenda 3137, Item 82a 8/19/2004 (Staff)

Outcome Held (9/23/04.)

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

35

[3530]

A00-12-015 - California Association of Competitive Telecommunications Carriers.

This decision approves in part the Competitive Local Exchange Carriers' request for advice letter treatment of Sections 851 through 854 matters. This proceeding is closed.

(Comr Lynch - ALJ Galvin)

Agenda 3135, Item 6 6/9/2004 (Kennedy);

Agenda 3136, Item 3 7/8/2004 (Kennedy)

Outcome Held (10/7/04. Further review.)

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

36

[3652]

R03-08-018 - Order Instituting Rulemaking to review policies concerning intrastate carrier access charges.

This order resolves several policy questions with regard to intrastate access charges, their levels and impact on California long distance markets. The Commission opened this rulemaking in response to the petition of AT&T Communications of California, Inc. (AT&T). The term "access charges" refers to charges imposed by local exchange carriers (LECs) such as Pacific Bell Telephone Company on interexchange carriers (IEC) such as AT&T for using the LEC's local exchange network.

Interexchange carriers use this switched access to originate and terminate long distance calls to the vast majority of California residential and business customers.

(Comr Peevey - ALJ Malcolm)

Agenda 3137, Item 84 8/19/2004 (Peevey)

Outcome Withdrawn

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

37

[3764]

R95-04-043 - Order Instituting Rulemaking on the Commission's own motion into competition for local exchange service.

I95-04-044 - Related matters. This decision addresses the approval and implementation of batch hot cut processes and related pricing applicable to SBC California and Verizon California, Inc. These findings are the result of the workshops and evidentiary hearings conducted pursuant to the Federal Communications Commission Triennial Review Order, adopted on February 20, 2003.

(Comr Kennedy - ALJ Pulsifer)

Outcome Held (9/23/04.)

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

38

[3728]

A02-11-027 - Comm South Companies, Inc. and Arbros Communications, Inc.

This decision grants prospective authority pursuant to Pub. Util. Code Section 854(a) for the transfer of control described in A02-11-027. The request for retroactive authority is denied. This decision also orders Comm South Companies, Inc. to pay a fine of \$5,000 for violating Section 854. Finally, this decision orders an affiliate of the Applicants to submit a compliance filing that discloses whether the affiliate discontinued service in California without Commission authorization.

(Comr Brown - ALJ Kenney)

Agenda 3137, Item 19 8/19/2004 (Wood)

**Outcome Signed (Comr. Lynch reserves the right to join Comr. Wood's dissent.
Comr. Wood reserves the right to file a dissent.)**

[D04-09-023](#)

Yes: (Brown, Kennedy, Peevey)

No: (Lynch, Wood)

Abstain: (none)

Absent: (none)

39

[3848]

C02-07-044 - The Utility Consumer's Action Network vs. AOL-Time Warner and Pacific Bell Telephone Company.

This decision grants The Utility Consumer's Action Network an award of \$79,090.95 in compensation for substantial contributions to D04-07-052. This proceeding is closed.

(Comr Brown - ALJ Walker)

Outcome Signed

[D04-09-024](#)

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

Water/Sewer Orders**40 A02-11-057 - Point Arena Water Works, Inc.**

[3683] This decision approves the rate case stipulation and decides the one remaining issue. This proceeding is closed.

(Comr Wood - ALJ Bushey)

Agenda 3136, Item 42 7/8/2004 (Lynch);

Agenda 3137, Item 85 8/19/2004 (Kennedy)

Outcome Signed (Comr. Kennedy will file a concurrence. Comr. Lynch will file a dissent. Pres. Peevey will file a concurrence.)

[D04-09-025](#)

Yes: (Brown, Kennedy, Peevey)

No: (Lynch, Wood)

Abstain: (none)

Absent: (none)

40a ALTERNATE TO ITEM 3683

[3811] This alternate decision finds that the statute of limitations was tolled and that customers are entitled to refunds for the entire overcharge period.

(Comr Lynch)

Agenda 3137, Item 85a 8/19/2004 (Kennedy)

Outcome Defeated

Yes: (Lynch, Wood)

No: (Brown, Kennedy, Peevey)

Abstain: (none)

Absent: (none)

41 R97-10-049 - Commission Order Instituting Rulemaking on the Commission's own motion to set rules and to provide guidelines for the privatization and excess capacity as it relates to investor owned water companies.

[3789]

This decision denies the petition of the California Water Association to modify D03-04-028. This proceeding is closed.

(Comr Kennedy - ALJ Bushey)

Outcome Held (10/7/04. Further review.)

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

42 (Rev.)

[3809]

R _____ - Order Instituting Rulemaking on the Commission's own motion to develop rules and procedures to preserve the public interest integrity of government financed funding, including loans and grants, provided to investor-owned water and sewer utilities.

Agenda 3137, Item 63 8/19/2004 (Staff)

08/30/2004 - This revision was not shown on the Agenda mailed to the public.

Outcome Signed

R04-09-002

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

Water/Sewer Resolutions and Reports**43**

[3600]

Res W-4477 - California Water Service Company (CWSC).

CWSC - Bakersfield, Bear Gulch, Chico, Dixon, Dominguez-South Bay, East Los Angeles, Hermosa-Redondo, King City, Livermore, Los Altos, Marysville, Mid-Peninsula, Salinas, Selma, South San Francisco, Stockton, Palos Verdes, Westlake, Willows, Visalia Districts - Resolution recording status of reserve account recovery filings and results of earnings tests. (Advice Letter (AL) 1622 and AL 1624, filed March 25, 2004, and AL 1642, AL 1643, AL 1647, AL 1648, AL 1649, and AL 1650, filed April 1, 2004)

Agenda 3135, Item 17 6/9/2004 (Staff);

Agenda 3136, Item 9 7/8/2004 (Staff);

Agenda 3137, Item 89 8/19/2004 (Staff)

Outcome Held (9/23/04. Further review.)

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

Transportation/Rail Safety Resolutions and Reports

44

Res SX-64

[3838]

This resolution recommends to the California Transportation Commission to set aside the funding for maintaining automatic grade crossing protection devices.

Outcome Approved

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

Other Utility Orders**45**

[3812]

R_____ - Order Instituting Rulemaking on the Commission's own motion for the purpose of considering policies and guidelines regarding the allocation of gains from sales of energy, telecommunications and water utility assets.

This order initiates an Order Instituting Rulemaking on the Commission's own motion to consider policies and guidelines regarding the allocation of the gains from sales of utility assets. The primary purpose of this proceeding is to set forth clear rules regarding who – the utility's investors or the ratepayers – receives the capital gains realized upon the disposition of utility property. The Commission will consider in this Rulemaking assets sold by electric and gas utilities, certain telecommunications carriers, and water utilities.

Agenda 3137, Item 91 8/19/2004 (Kennedy)

Outcome Signed (Comr. Kennedy reserves the right to file a concurrence.)

R04-09-003

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

Commissioner's Reports

46

Commissioner Lynch Report

[3846]

Discussion of and vote on sending a letter in support of the re-nomination of Commissioner Adelstein to the Federal Communications Commission.

Outcome Defeated

Yes: (Lynch, Wood)

No: (Brown, Kennedy, Peevey)

Abstain: (none)

Absent: (none)

Closed Session

This notice is furnished under Government Code Sections 11125 and 11126.3. The Commission will meet in Closed Session following the Public Session of its regularly scheduled meeting. In the Closed Session, the Commission may consider personnel matters as provided under Government Code Section 11126(a), institution of proceedings or disciplinary actions against any person or entity under the jurisdiction of the Commission as provided under Government Code Sections 11126(d)(2) and 11126(e)(2)(C)(i), and pending litigation as provided under Government Code Section 11126(e). Additional items may be added to the closed session agenda pursuant to Gov. Code Section 11126.3(d). If in Closed Session the Commission votes to appoint, employ, or dismiss a public employee, the Commission will thereafter reconvene in Open Session to make the

Non-Federal

48

[3601]

C98-04-004 - Conference with Legal Counsel - Application for Rehearing

C98-06-003; C98-06-027; C98-06-049; I90-02-047 - Related matters. Disposition of Applications for Rehearing of D03-11-021 filed by The Latino Issues Forum (LIF), The Utility Reform Network, and SBC California. On November 13, 2003, the Commission issued D03-11-021, awarding intervenor compensation to The Greenlining Institute and LIF for its contribution to D01-09-058.

Agenda 3136, Item 97 7/8/2004 (Staff);

Agenda 3137, Item 97 8/19/2004 (Staff)

Outcome Held (9/23/04.)

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

49

[3606]

A02-12-027 - Conference with Legal Counsel - Application for Rehearing

A02-12-028, I03-03-016 - Related matters. Disposition of the application for rehearing of D03-12-058 filed by Southern California Edison Company (SCE). D03-12-058 found Local 483 Utility Workers Union of America eligible for intervenor compensation under Chapter 9, Article 5, Section 1801, et seq., of the Public Utilities Code.

Agenda 3135, Item 66 6/9/2004 (Staff);

Agenda 3136, Item 98 7/8/2004 (Wood);

Agenda 3137, Item 98 8/19/2004 (Staff)

Outcome Held (9/23/04.)

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

51

[3684]

R01-08-028 - Conference with Legal Counsel - Application for Rehearing

Disposition of Applications for Rehearing of Decision D03-12-060 filed by Women's Energy Matters (WEM), Residential Energy Service Companies' United Effort (RESCUE), and joint application of Consortium for Energy Efficiency, Inc. et al. R01-08-028 examines the Commission's future energy efficiency policies, administration and programs. D03-12-060 is an interim opinion adopting funding for the 2004-2005 energy efficiency programs and studies. D03-12-060 was modified in part by D04-02-059.

Agenda 3136, Item 102 7/8/2004 (Staff);

Agenda 3137, Item 99 8/19/2004 (Staff)

Outcome Signed (Comr. Lynch reserves the right to file a dissent.)

D04-09-026

Yes: (Brown, Kennedy, Peevey, Wood)

No: (Lynch)

Abstain: (none)

Absent: (none)

52

[3785]

A03-11-011 - Conference with Legal Counsel - Application for Rehearing

A03-11-013 - Related matters. Order disposing of application for rehearing of D04-05-033 filed by Inflexion California Communications Corp. (Inflexion). In D04-05-033, the Commission denied Inflexion's applications for a CPCN to provide competitive local exchange service and for approval to acquire the assets of In Touch Communications Inc. pursuant to Public Utilities Code §851. The Commission found that the management team of Inflexion had not shown that it was qualified to serve California residential customers, in part because a company run by key Inflexion managers was recently fined \$400,550 by the Pennsylvania Public Utilities Commission for slamming, failed to cooperate with the Pennsylvania PUC's slamming investigation, and failed to pay the fine.

Outcome Signed

D04-09-027

Yes: (Brown, Kennedy, Lynch, Peevey, Wood)

No: (none)

Abstain: (none)

Absent: (none)

53

[3814]

A03-10-017 - Conference with Legal Counsel - Application for Rehearing

A03-10-018, A03-10-019, A03-10-020, A03-10-021, A03-10-031 - Related matters. Disposition of Application for Rehearing of D04-05-060 filed by California Water Service Company (CWSC). D04-05-060 is an interim opinion concerning water quality issues and also authorizes dismissal of certain applications. The underlying proceeding concerns authorization for CWSC to increase its rates for water service in certain districts as well as a request by CWSC that the Commission find that it is in compliance with General Order 103.

Outcome Held (9/23/04.)

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

54

[3818]

I04-04-024 - Conference with Legal Counsel – Application for Rehearing

Disposition of Application of Sound Energy Solutions for Rehearing of I04-04-024. The Order institutes an investigation into the proposal of SES filed with the Federal Energy Regulatory Commission to construct a liquefied natural gas terminal in Long Beach, California.

Outcome Held (10/7/04.)

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

55

[3833]

R01-09-001 - Conference with Legal Counsel - Application for Rehearing

I01-09-002 - Related matters. Disposition of Applications for Rehearing of D04-02-063 filed by the Office of Ratepayer Advocates and The Utility Reform Network. In D04-02-063, the Commission allowed SBC Pacific Bell Telephone Company to write off approximately \$400 million of a Post Retirement Benefit Other Than Pension regulatory assets above the line in 1998.

Outcome Held (9/23/04.)

Yes: (none)

No: (none)

Abstain: (none)

Absent: (none)

56

[3834]

A02-11-007 - Conference with Legal Counsel - Application for Rehearing

Disposition of Application of Southern California Water Company (SCWC) for Rehearing of D04-03-039. The Order, among other things, finds that SCWC violated section 851 by failing to seek Commission approval for a lease of water rights to the City of Folsom, voids the lease from its inception, imposes a fine against SCWC, and orders a percentage of lease revenues returned to ratepayers.

Outcome Signed (Comr. Kennedy will file a dissent.)

D04-09-028

Yes: (Brown, Lynch, Peevey, Wood)

No: (Kennedy)

Abstain: (none)

Absent: (none)